IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1149 OF 1985

Central Bank of India. .. Plaintiffs

vs.

Satish Chhaganlal Bhansali

& Anr. .. Defendants.

Mr. K.B. Irani with Mrs. S.R.Sathe i/by Little & Co. for the plaintiffs.

Mr. F.T. Marolia i/by H. Doctor & Co. for defendant no. 2.

None for defendant no. 1.

CORAM : S.U. KAMDAR, J.

DATE : 10th August, 2005.

P.C.

. The present suit is filed by the plaintiff against the defendants for recovery of a sum of Rs. 66,410.02 towards over draft facility and Rs. 1,99,785.99 towards cash credit facility. In the present case it is the case of the plaintiff that some time on or about 15.4.1982, the defendant no. 1 approached the plaintiffs for granting an over draft facility and executed the demand promissory

note, letter of sole proprietorship, letter of continuing security, letter of lien, letter of interest all dated 15.4.1982 and availed of the said over draft facility from the plaintiff. The defendant no. 1 has also approached the plaintiff bank for the cash credit (hypothecation) facility of Rs. 50,000/- and in respect of which the defendant no. 1 has executed a demand promissory note, letter of continuing security and deed of hypothecation all dated 21.4.1982. On 5.5.1982 the 2nd defendant has addressed a letter that he is standing as a guarantor towards the cash credit facility for the sum of Rs. 50,000/- and he further executed a guarantee for the sum of Rs. 50,000/-. Pursuant to the aforesaid arrangement arrived at the plaintiff disbursed the amount and the defendant no. 1 has availed of the same. However, the defendant no. 1 defaulted in repayment of the amount. Accordingly, on 9.4.1985, the plaintiff’s advocate called upon the defendant to make payment of the outstanding amount due and payable. However, in spite of the notice, no payment was made. Thus, the present suit is filed for the recovery of Rs. 66,410.02 and Rs. 1,99,785.99 under the aforesaid two facilities.

2. In so far as the 1st defendant is concerned, the defendant no. 1 is served and inspite of service of the said writ of summons on the 1st defendant, the 1st defendant has not filed any

written statement. The 1st defendant is served by substituted service and affidavit of service dated 16.4.1992 is filed on record of this Court. In view of the non filing of the written statement, a decree is required to be passed as against the defendant no. 1.

3. In so far as the 2nd defendant no. 2 is concerned, both the parties agreed that the bank guarantee was only in respect of the cash credit facility to the extent of Rs. 50,000/- only. The learned Advocate appearing for the 2nd defendant states that he is willing to pay the said amount of Rs. 50,000/- if he is given concession in the interest rate. In view of the fact that the guarantee was only for the sum of Rs. 50,000/-, I am of the opinion that in the present case the said offer of the 2nd defendant should be accepted. In so far as the claim of interest is concerned, both the parties have left to the Court to determine what rate of interest should be granted.

4. The defendant no. 2 who executed the guarantee has expired on 18.7.1997 and the defendant nos. 2(a) and 2(b) are the legal heirs of the said defendant and as such are only liable to the extent of the estate coming to their hands. In so far as the 2nd defendant is concerned, I pass a decree in favour of the plaintiff and against the defendant

no. 2 for a sum of Rs. 60,000/- which are to be paid within a period of four weeks from today. The plaintiffs will accept the same without any further interest. However, if there is non-payment within the aforesaid period of four weeks, then the said amount of the decree of Rs. 60,000/- will carry interest on the principal amount of Rs. 50,000/- at the rate of 12% per annum from the date of expiry of the period of four weeks till payment and/or realisation. In so far as defendant no. 1 is concerned there shall be decree in terms of prayer clauses (a) and (b).

5. Suit disposed of accordingly. However, there shall be no order as to costs.